



Portugal

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association (including Mutuels), Foundation, Cooperative, Benefit Corporation, Endowment, Society.

Note: Since the amendment of the Particular Institutions of Social Solidarity (Instituições Particulares de Solidariedade Social) Statute with Decree-Law no. 172-A / 2014 of 14 November, a new category of organizations was created, Institutes of Catholic Church Organizations or Institutions, including Parish Social Centers and Diocesan and Parish Caritas (Santos, 2015)

Five main social issues addressed by these organizations: Health and Medical Research, Basic Needs, Youth and Family, Religion, International Causes

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US \$500

The process is simple when it comes to forming an association, since there is a proper and un-bureaucratized service, made available by the State - <http://www.associacaonahora.mj.pt/>. Through the Associação na Hora (Association on the Spot) it is easy to create an association at a minimum cost of EUR €300 (US \$360) or EUR €200 (US \$240) (in case of Student Associations created under this legal form). However, the process becomes more complex when it comes to intervening in specific areas, such as education or humanitarian intervention. From 2014 onwards, the constitution of Private Institutions of Social Solidarity was no longer possible through the Associação na Hora portal, and its constitution was now under Social Security, an institution of the Government.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State Government

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentives	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	3.7	4.0	4.0	3.6	3.0	3.65

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 3.0

There is freedom granted by the Constitution of the Portuguese Republic that safeguards fundamental rights and freedoms. Freedom of Association is recognized in Article 46 of the Constitution provided such associations are not intended to promote violence and their objectives are not contrary to the criminal law. Currently, the Ministry of Labor and Social Security regulates the formation of POs. This responsibility varies depending on the ruling party. Portugal's legal framework provides a favorable environment to form associations. As explained earlier, the Association on the Spot (Associação na Hora – ANH) facilitates creating associations, which are the most common form of philanthropic organizations in Portugal. Private Foundations also require the approval of the government. Private Foundations are also required to request and receive the approval of the government. While there is no minimum founding capital required by law, a foundation can be denied a request for recognition if the assets are deemed insufficient (at least EUR €250,000 (US \$300,000)) (Article 22 of the Framework Law for Foundations).

Although there are no substantial legal impediments to the constitution of organizations in this area, not all constituted associations are from the philanthropic area, many represent corporate interests, although they do not directly aim for profit. In turn, the Third Sector – comprised in the social economy – has shown some growth, both in terms of employability and in terms of number of organizations (for altruistic purposes), particularly since 2012/13 during IMF economic assistance. However, its weight in the Gross Domestic Product is still not very expressive and the values recorded are below the European average. The main reason is that a large number of third sector organizations work in the area of social assistance where there are already a large number of services provided by the government, namely the Social Security. Although there are practically the same number of organizations in the field of culture, sport and recreation compared to those in the social area, the latter move more economic values and establish agreements with the government. As the social economy is heavily anchored in services and social assistance, professionals offer most social interventions and the number of volunteers is small. Moreover, it is a culture based on the role of the government as guarantor of social welfare. Therefore, although the number of organizations grows, this does not always coincide with a greater participation of civil society. However, associationism has grown in recent years.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

The “degree of freedom” is related to the nature of the organization, legal status, area of intervention, economic dimension, number of employees (or volunteers), etc. There is a whole set of rules, varying

according to the size and the capacity for intervention, namely because they can receive funds from the government. A philanthropic organization can integrate leading structures of the government, particularly as mandatory consultation partners. The Portuguese government provides some services and facilitates networking. However, there is a strong historical dependence on the government, particularly for funding.

In relation to the Cooperation Protocols between the State (Ministries) and the umbrella organizations representing the Third Sector to attend social needs in the areas of health, education and employment, organizations are required to prepare or revise their internal regulations and redefine their human resources structure to comply with the required technical requirements to act on these areas. The study conducted by Santos et al. (2015) about the social impact and economic crisis of the third sector in Portugal revealed concerns among third sector organizations about increasing state control and fear to lose autonomy in the way they manage their services. There are formal rules that must be fulfilled by all POs, although with some variations depending on the type of PO. For example, in the case of associations there is the imposition of minimum numbers of associates; definition of the corporate purpose, registration as a legal person, structure defined in terms of corporate bodies, as well as imperatives regarding the presentation of accounting. In the case of IPSS or Foundations in the area of social solidarity (where there is also the same obligation), there is still an obligation to be subject to the Basic Social Economy Law (Lei de Bases da Economia Social) (Law no. 30/2013 of May 8). It was also important the signing in 1996 of the Covenant for Social Solidarity (Pacto da Solidariedade Social) where the Government and the representatives of the partner institutions undertake to cooperate and create an integrated social support network. The government assumes a mandatory regulatory role, based on the principle of subsidiarity (funding). This regulation is more expressive when the PO action is related to activities in the area of social exclusion. Although some changes to the Law have been introduced in 2014 – the most expressive was the possibility that IPSSs may have their own companies and social businesses, all these activities should be aimed at the exclusive financing of their activities. This dependence on the government is one of the main characteristics of the reality of PO in Portugal, not only because of financial needs but also because of the regulatory role the State has.

It should be emphasized that the twentieth century in Portugal was marked by a strong influence of the government, especially between 1926/1974 when there was a right-wing dictatorship, or at the beginning of the democratic period, where the great influence was socialist, as was evident in the Constitution of the Republic of 1976. Thus, the State continues to be seen as the main regulating agent, despite the existence of short historical periods where the discourse evidenced the need for decentralization. However, economic liberalization was not reflected in terms of POs. For example, the transfer of social functions traditionally assumed by the government to private organizations (in education or health) is not accepted peacefully by various political groups and by a large part of civil society, mainly because private groups continue to receive funding of the government.

Question 3: To what extent is there government discretion in shutting down POs?

Score: 4.0

The Government is mandated to decree the dissolution of a philanthropic organization. According to the Portuguese Civil Code (Art 192), a judicial decision can dissolve an organization if its insolvency is declared. However, this has only been the case of some Foundations or some Private Institutions

of Social Solidarity (IPSS), particularly those that are dependent on government funds and have not fulfilled their purposes. The competent authority might also terminate foundations if its purpose is systematically pursued by unlawful or immoral means or its existence becomes contrary to public order. In the case of small organizations, the degree of intervention of the government is irrelevant, although there are fiscal obligations whose non-compliance may determine involuntary termination.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Both individuals and corporations can deduct taxes from their income when donating to charitable organizations. The process is complicated and there is lack of information regarding how organizations file their taxes or how companies and individuals donate. When it comes to companies, the main difficulty is whether it is patronage or whether it is advertising or sponsorship. The rules are different according to the typology, and there are more advantages when there are no economic advantages. In the case of individuals, they may assign 0.5 percent of their Personal Income Tax (IRS) to an IPSS and are considered costs or losses for the purpose of determining taxable income. Tax laws establish that 25 percent of individual donations made to accredited institutions pursuing charitable goals are deductible, provided that the donor did not treat the donations as business expenses. Income Tax Laws in Portugal also establish different categories of corporate tax deduction depending on whether there is a limit on deduction or not. In the case of unlimited donations, corporate donors can deduct between 130 and 140 percent of the donated amount. Limited donations, like the ones to charities and other private institutions of social solidarity allow deductions between 130 and 150 percent of the donated amount.

Although there are legal advantages, there is a lot of mistrust. Firms tend to consider donations as advertising rather than as social responsibility. In the case of individuals, there is some mistrust regarding the destiny of their donations. It would also be necessary for the PO to seek to be more transparent and to invest in more direct communication with society.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Article 10 of the Code of Taxation of Income and Gains of Collective Persons (Decree-Law No 442-B/88) establishes that private institutions of social solidarity are exempt from Corporate Income Tax (IRC). Also, “collective persons of mere public utility that pursue exclusively or predominantly objectives of a scientific or cultural, charitable, aid, benevolent, social solidarity and protection of the environment nature” are exempt provided that their activities do not cover business income from commercial activities. Additionally, philanthropic organizations and private social welfare institutions in certain fields are also exempt from VAT, while private foundations may be exempt from real estate

and vehicle tax if properties are directly used for accomplishing the organization's main purposes. To gain tax-exempt status, philanthropic organizations need to request and receive a formal recognition from the Ministry of Finance or the competent tax authority.

Since 2011 several IPSS have been subject to the Legal Review of Accounts (article 12 of Decree-Law no. 36 / A - 2011, of March 9). In the case of donations, the Law is not clear regarding tax benefits, especially because it is written in terms of the tax advantages of donors and not of those who receive. The Law has changed over the years. At the end of the 1980s, they were exempt from Corporate Income Tax, but from 2000 onwards, this benefit became dependent on certain requirements: effective exercise of activities to achieve ends, allocation of resources to ends, lack of interest. In 2006, they became automatically exempt when it came to public or private charitable institutions. From the period of financial assistance in 2011 to the present, Portuguese fiscal policy has been characterized by instability. Although the tax system appears to be advantageous for the PO, they complain of economic difficulties and lack of fiscal clarification.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 4.0

Portuguese tax laws provide tax incentives for charitable contributions to public-benefit foundations and according to Transnational Giving Europe (2016) public-benefit status seems to be available only to domestic foundations and domestically operated foundations. Therefore, the Portuguese tax law does not provide tax incentives to donors for cross-border donations. However, there are no restrictions for sending cross-border donations, although they are considered cross-border financial flows that might have additional costs and taxes.

Most of the donations are aimed at POs whose head office is in Portugal, although their main activity may be in third countries, as is the case of nongovernmental organizations working in the field of development in countries such as Mozambique or Guinea-Bissau. The law does not include international organizations that do not have a Portuguese tax number and do not consider them as donations in fiscal terms. Large organizations such as UNICEF or Amnesty International are registered in Portugal and have a tax number. The main difficulties are those listed previously: lack of knowledge of the Law and distrust on the part of those who donate.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 4.0

It is the same situation as above, since cross-border philanthropic flows are considered financial flows. Although transnational organizations can receive funding from other organizations, particularly those that are "affiliates" of other larger organizations (e.g. Caritas, AMI, Red Cross), in concrete terms it is not customary and additional taxes and costs might emerge. In fact, the problem of funding organizations is complex, particularly when dealing with smaller organizations such as civil society associations. Furthermore, imported goods are subject to VAT, but several exemptions are in place due to the fact that Portugal is a member of the European Union. Overall, there are no restrictions or approval requirements to receive cross-border donations. PO can receive European Union funds or apply for European funding programs, although under rules agreed by the government with the European Union (i.e. the government is always the direct interlocutor). They can also apply for funding projects agreed between the Portuguese government and third countries (mainly Portuguese-speaking countries such as Angola, Timor-Leste, Mozambique, Cape Verde or Guinea-Bissau). If we consider this factor, we can say that the situation has positive aspects, although we are talking about funding, not donations. On the other hand, there is no practice of receiving direct donations from individuals or international companies, especially because there are no legal clarifications and regulation is very rigid. It should be noted that a large part of the PO receive funds from the government and that regulation is very high. Even in the case of small associations, their accounts are monitored. Many laws have been published whose intent is the need for greater economic transparency. The origin of funding is a sensitive issue.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.6

It cannot be said that the political environment is hostile to the philanthropic sector; however, the levels of participation and engagement are low. According to Franco et al. (2005), while there are POs – such as cooperatives and Private Institutions for Social Solidarity - that are visible and highly supported, other actors have faced financial difficulties that have emerged with the economic crisis. Indeed, there is a great concentration of interest on social issues, sometimes to the detriment of other issues in the cultural, human rights, and other arenas. Based on the Survey on the NGO sector in Portugal conducted by Calouste Gulbenkian Foundation (2015), the majority of POs are aimed at providing services in social services and emergency situations.

Additionally, there is a historical framework that understands the Portuguese State as the main supporter of social welfare. This aspect, in part, blocks the development of new forms of social

organizations; particularly because people understand that, the government should be the main (or only) actor responsible for providing services for the public good. Therefore, in terms of governance there is a lack of participation and involvement.

Business involvement in philanthropy is not great either (although there are good examples, particularly in volunteering and supporting for social projects), and people tend to distrust the "good intentions" of companies, as in the case of Corporate Social Responsibility. However, a number of good associations have emerged (although not all are legally constituted) and for some time now, the government has promoted social entrepreneurship and developed several policies and activities improving Corporate Social Responsibility (European Commission, 2014).

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.6

There is not a simple answer to this question. On one hand, the legal requirements have been simplified and the government offers some support to promote the philanthropic sector. Additionally, there are different levels of participation and many associations find greater support from local governments (and not from the central government), depending on their possibilities and capacities for cooperation. Indeed, one third of the philanthropic organizations in Portugal extend their activities to local territories, smaller than a municipality, as their work often responds to local needs.

On the other hand, there is no strong appeal to actively engage with civil society activities, in part because of the strong role of the Portuguese State as main provider of the public good. In terms of values, philanthropy and citizenship have been successively promoted (in theory) by different governments. However, in times of economic crisis (2011 to 2015) the discourse was always marked by conflicts, showing the differences between positions that defended the role of philanthropic organizations and the role of the government. In fact, the number of new foundations decreased, especially between those years of 2011 to 2015 (Franco 2015). Even though the philanthropic sector strives to have a relevant role in the field of social services.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 3.0

Portugal has long-established philanthropic traditions. The Portuguese philanthropic values date back to the 12th century, when Catholic Church institutions already provided social services for people in need. In fact, the culture of giving is rooted in. It has been associated to the Church.

However, the level of civil society participation is considered low, whether in associative, philanthropic or voluntary activities. There is a strong dependence on government welfare, along with a great historical force of institutions linked to the Catholic Church. In the World Giving Index (2016), Portugal ranked 90 out of 140 countries, being better placed in terms of helping strangers (78), than volunteering in organizations (90) and donating money to charity (95). The last category

shows a decrease in the last three years (CAF 2016). It can be explained at the aftermath of the recent economic crisis. It is consistent with the fact that the public has a negative perception of foundations that might be caused by the census and evaluation process targeting foundations led by the Government in 2012 (Franco 2015). According to a study conducted by the Catholic University of Portugal (2015), public funding is the most important source of income for philanthropic organizations (almost 85 percent in some organizations), complemented with contributions from users and donations from private individuals, although corporate donations are still not very relevant.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

In order to understand the current state of the Portuguese philanthropic sector, it is important to consider its four fundamental historical moments: Middle Ages; 19th Century; Fascist /Salazarist Period (1926-1974), and the Democratic Period (1974-now).

In the Middle Ages, a type of charity-driven social intervention subsisted, where the social action of organizations of the Catholic Church, such as the Holy Houses of Mercy, was notorious. During the industrial period in the 19th century the great influences originating from the Enlightenment Period, Laicism and Republicanism, influenced by the French Revolution led to the great divide between the role of the Church and the role of the government. The main disputes were about the role each entity should play, in relation to both education and social intervention. In response to the loss of influence, the Catholic Church created a document entitled Social Doctrine of the Church, or Encyclical *Rerum Novarum*, in the period of Pope Leo XIII. This document sets the principle of subsidiarity. This principle determines that “one cannot help the human person without paying attention to the society in which it is inserted”. It also says that the government should not interfere in various sectors of society, including social programs.

In the Fascist Period, most philanthropic organizations were extinguished and persecuted. The Portuguese State was seen as the main actor in the social field (although with a close relationship with the Catholic Church) and social programs became professionalized.

Finally, the democratic period is initially signaled by the emergence of diverse organizations of political, cooperative and associative profile, while opening new areas of social intervention: decolonization, education, health and housing. In general terms, the influence of the Catholic Church is decisive in the Third Sector, coexisting (in a professionalized way) with the services provided by the government. However, the level of participation of the Portuguese civil society is low as compared to the European average, with only few expressive philanthropic or associative organizations in arts and culture, for example.

These historic events partly explains the low involvement of society in philanthropic initiatives. Lack of funding and economic dependence on the government are other factors that explain the comparative low growth rate and sporadic appearance of formal and informal groups addressing philanthropic causes.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The Refugee Crisis has marked the international context in the last two years, with immediate repercussions in the majority of Western countries, particularly in Europe, due to the proximity of land borders. Especially the Syrian War and the difficulties to find a solution to end the war opened the door to a serious humanitarian crisis that will take decades to solve;
- Along with the humanitarian problem, I believe that the rise of more radical political ideologies (both right and left), driven by the increase of terrorism and by the inability to obtain social consensus on essential issues such as safety; social assistance and housing, has led to the appearance of critical social fractures. Finally, the increase of terrorism on a global scale unfortunately became a common and widespread phenomenon in all countries; and
- Another dimension that we have to consider is the crisis of the European social model and federalism, which is visible in the United Kingdom's ongoing exit of the European Union. We must consider that the sovereign debt crisis, together with immigration policies, as well as the question of the autonomy of states toward international institutions, such as the International Monetary Fund or the European Council, have created the current political and social framework.

Future development trends in the philanthropic landscape

The aforementioned issues demonstrate that there are serious dualities in the current international landscape: on one hand, the question of solidarity is often understood as exclusion rather than inclusion. That is the debate about whether social services should be provided only for citizens, or should be extended to migrants, particularly refugees or those who practice other religions, particularly Islam.

On the other hand, government policies are often infused with a conflicting political and social debate that is giving way to the rebirth of nationalism and radicalism. In the international context, there is the failure of European federalism and its notorious rise of international politicians who tend to favor the economic and financial aspects of development to the detriment of international solidarity and philanthropy.

Likewise, the issue of multiculturalism must be brought into the debate, particularly because while it relates to solidarity, it is also attached to security issues that become important in the current international context signaled by war and conflict. The field of philanthropy and solidarity is increasingly important, and conditions must be created for civil society to organize and mobilize philanthropic resources around common goals.

Three key recommendations to improve the environment for philanthropy

- The first recommendation concerns the urgent need for philanthropic organizations to be independent from the tutelage of government. It is necessary to create the legal conditions that contribute to strengthen philanthropic organizations while increasing access to external sources of funding;

- Second, it would be necessary for POs to have access to international cooperation platforms with information about projects in order to foster networking and build partnerships on a global scale;
- Social Responsibility of Organizations (particularly transnational corporations) should grow in order to achieve greater levels of transparency, particularly when they have economic and political interests in developing countries; and
- Finally, another essential aspect would be the mandatory inclusion of values of solidarity, citizenship and philanthropy in the school curricula, and make it obligatory to participate in social and / or community development projects to educate civic-minded students.